

Home and Community Based Settings: Provider Training

Overview of the New IDAPA Rules for All HCBS Settings

April 29, 2016

Note: This meeting will be recorded. The recording will be posted to the HCBS webpage

Webinar Topics for Today

- Brief history of the new HCBS rules
- Intent of the new HCBS Rules
- Today's overview will focus on the new IDAPA rules that specifically apply to all settings where HCBS are delivered
 - We will have a later presentation on the new IDAPA rules that specifically apply to provider-owned or controlled residential settings
- Compliance timeline review
- Upcoming additional training opportunities

Background

- The Centers for Medicare and Medicaid Services (CMS) published new regulations in 2014 that implemented new requirements for state Medicaid HCBS programs.
 - To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate
 - To enhance the quality of HCBS and provide protections to participants

Background

- CMS required states to develop Statewide Transition Plans that describe the state's plan to ensure full compliance with the regulations no later than March 2019.
- Idaho submitted its Statewide Transition Plan to CMS in October 2015 – it is still pending approval. This plan describes the steps that Idaho Medicaid is taking to move into full compliance.
- We recently completed one step of that Transition Plan with the promulgation of new IDAPA rules.

Intent of the IDAPA Rules

- To have sound regulatory support for implementing the new requirements
- To have HCBS rules specific to Idaho and its programs

IDAPA 16.03.10.310

- This first subsection of the new set of rules indicates Idaho's HCBS programs are:
 - Children's Developmental Disability Services
 - Adult Developmental Disability Services
 - Consumer-Directed Services
 - Aged and Disabled Waiver Services
 - Personal Care Services

IDAPA 16.03.10.311

- This subsection specifies that the HCBS rules do not supersede the decision-making authority that has been legally assigned to another individual or entity. These entities include:
 - Payee
 - Court-imposed restrictions related to probation or parole
 - Court-imposed restrictions when committed to the Director of Health and Welfare
 - Legal Guardians (including parents of minor children, unless the child has another legally assigned decision-making authority)

IDAPA 16.03.10.311 - continued

- This means that the HCBS requirements do not “trump” or replace a guardian’s decision-making role for a participant.
- This does not mean that a guardian may decide that a setting requirement does not need to be met for a participant just based on the guardian’s personal values or beliefs.

Examples of Decision-Making Authority

Example: A guardian does not want an individual to participate in the community activities offered by the Adult Day Health where she receives services. However, there are no identified health or safety risks to the participant – it is just the personal preference of the guardian. Therefore, the provider cannot prohibit the participant from participating in those community activities.

Examples of Decision-Making Authority

Another example: A guardian wants a CFH provider to limit an individual from going out into the community without supervision. The guardian is concerned because the individual has historically exhibited aggressive behaviors, and he fears that the individual could injure someone or be injured herself. The individual, guardian, plan developer and CFH work together to develop a risk mitigation strategy that is documented in the service plan.

IDAPA 16.03.10.311 - continued

- If a setting quality poses a health or safety risk to a participant or those around a participant, then the participant, guardian, and person-centered planning team may discuss the implementation of risk mitigation strategies during the person centered planning process.

IDAPA 16.03.10.312

- This subsection defines HCBS settings as all locations where people receiving HCBS live or receive their services.
- HCBS settings are NOT:
 - Nursing facilities
 - Institutions for mental diseases
 - Intermediate Care Facilities for persons with Intellectual Disabilities
 - Hospitals

IDAPA 16.03.10.312 - continued

- HCBS settings are NOT settings that have qualities of an institution. Qualities of an institution include:
 - Located in a building that provides inpatient institutional care
 - Located on the grounds of, or adjacent to, a state or federally operated inpatient facility
 - Has the effect of isolating participants from the broader community
- This means that HCBS cannot be delivered in a setting that is an institution or has the qualities of an institution – namely, isolating the participants that receive services or reside there.

IDAPA 16.03.10.313

- This subsection describes the qualities that *all* HCBS settings must have. Settings must:
 - Be integrated in and support full access to the greater community
 - Be selected by the participant, based on their needs and preferences, and include consideration of the participant's safety and the safety of those around the participant.
 - Ensure that participants' rights to privacy, dignity, respect, and freedom from coercion and unauthorized restraint are honored

IDAPA 16.03.10.313 - continued

- Settings must also:
 - Optimize an individual's initiative, autonomy, and independence. This means that individuals have opportunities to make choices about how they spend their time in a setting, in the context of the service being offered there.
 - Promote opportunities for participant choice regarding the service and supports provided in the setting. This means that participants have opportunities to make choices and provide feedback about the services they receive in that setting.

IDAPA 16.03.10.313 - continued

- This subsection also specifies that providers of services furnished in a participant's own home can't limit these setting qualities without risk mitigation goals and strategies that are documented in the person-centered plan.
- For example, if a person receives Personal Care Services or Residential Habilitation in their own home, the agency would have to document a risk mitigation goal and strategy based on the participant's needs if a setting quality poses a health or safety risk.

Risk Mitigation Goals and Strategies

- Remember, risk mitigation goals and strategies may be implemented when one or more of the setting qualities poses a health or safety risk to the participant or those around the participant. They must be documented in the person-centered plan.
- Rule does not outline *how* risk mitigation goals and strategies are implemented or documented: these processes will be program-specific. Additional information on these processes will be available soon through each program.

IDAPA 16.03.10.314-317

- Subsection 314 and 315 are specific to provider-owned or controlled residential settings. These apply to Residential Assisted Living Facilities and Certified Family Homes. These rules will be reviewed in our next training.
- Subsections 316-317 are specific to the person-centered service planning process and the person-centered service plan. Program-specific information and training on person-centered planning will be available in the coming months.

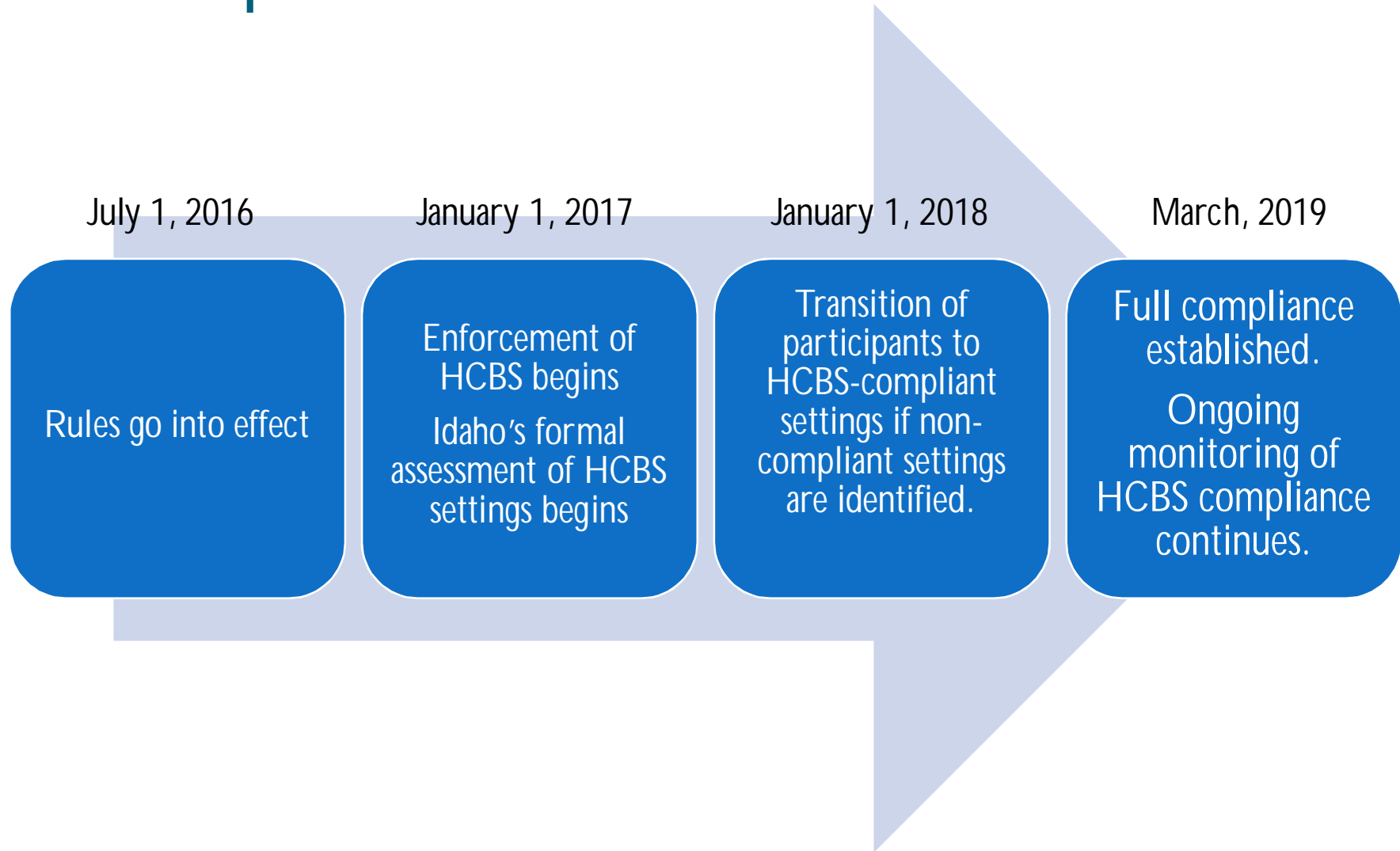
IDAPA 16.03.10.318

- This subsection indicates that all providers must complete a Department-approved self-assessment.
 - This self-assessment will be available from the Department in August 2016
 - It will help you determine if you are in compliance with the setting requirements
 - It will also help you identify areas where you might need to make changes to move into compliance
 - You will be asked to keep this self assessment on file, with evidence to support your responses
 - Additional training on how to complete this self assessment will be provided in August 2016

IDAPA 16.03.10.318

- This subsection specifies that any new HCBS providers will be expected to fully comply with the HCBS qualities as a condition of becoming a Medicaid HCBS provider
- In addition, the Department will begin enforcement of quality assurance compliance with the setting requirements on January 1, 2017.
 - This means that the Department will not request corrective action for compliance issues identified between now and January 1.
 - This does not mean that providers do not have to comply with the requirements until January 1.

Compliance Timeline



Upcoming Training Opportunities

May 6 3-4:00PM MDT	Residential Settings Rules Overview (WebEx)
May 10 1-2:00PM MDT	Repeat of All Settings Rules Overview (Teleconference only)
May 16 3-4:00PM MDT	Repeat of Residential Settings Rules Overview (Teleconference Only)

Keep in Touch!

Additional training will be offered over the next several months. You can stay informed about training opportunities, educational materials, and other HCBS-related information by:

Visiting the HCBS webpage at: www.HCBS.dhw.idaho.gov

Emailing the program at: HCBSSettings@dhw.idaho.gov to be added to our distribution list.

QUESTIONS?